14. COOPERATION BETWEEN EDUCATION AND LAW ENFORCEMENT OFFICIALS

For many years, education and law enforcement professionals throughout New Jersey have enjoyed a close and excellent working relationship. As an expression of the commitment to work together to protect students and the educational environment, a number of "memoranda of agreement" have been signed by local education and law enforcement officials. These agreements were developed by the Attorney General's Education and Law Enforcement Working Group, and have been endorsed by the Department of Education and State Board of Education, and have even been expressly referenced in rules and regulations promulgated by the State Board. See e.g., N.J.A.C. 6:29-10.3(b)(12) (requiring all districts to "adopt and implement policies and procedures that must include an agreement or memorandum of understanding with appropriate law enforcement authorities, which agreement must be consistent with the policies established in the state Memorandum of Agreement developed by the Attorney General's Education and Law Enforcement Working Group").

These agreements focus on a number of specific areas of mutual concern, such as the need to respond to illicit drugs, firearms, and other dangerous weapons in and around schools. In addition, a memorandum of agreement concerning hate crimes — crimes that are motivated by prejudice — has also been endorsed by the Attorney General and Commissioner of Education and has been distributed as a statewide model.

All of these documents spell out in some detail what teachers, principals, and police officers are to do in the event that drugs, drug paraphernalia, or firearms or other weapons are discovered on school grounds, or other crimes are committed on school property or involve school-aged children. These agreements were developed because both education and law enforcement professionals recognized that it would be inappropriate to wait for a crisis to happen to first decide how to respond. Rather, it is far better to develop precise policies and procedures that anticipate problems and that clarify everyone's duties and responsibilities.

Despite all of the enlightened rhetoric, these agreements would not be worth the paper that they are printed on unless school districts get the word out to all school staff members. To help to accomplish that important objective, a number of county prosecutors have developed "quick reference guides" to summarize the rights and responsibilities that are set forth in these memoranda.

14.1. Referrals to Law Enforcement Agencies.

A. Firearms. There is nothing more frightening to parents, teachers, and children than the thought that loaded guns might be brought on to school property. Although most jurisdictions in New Jersey have been spared the level of violence experienced in some urban communities, such as Los Angeles and nearby New York City, the fact remains that the problem of firearms on school property is real, the threat far from imaginary. No community or campus is immune, and there have been a number of recent incidents involving the presence of firearms on school property in suburban and rural as well as urban communities throughout New Jersey. It is therefore the responsibility of all education and law enforcement officials to be prepared to act swiftly, calmly, and deliberately in response to a firearms incident.

School staff members should keep in mind that more often than not, when a firearm is brought on to school property, it is not used to terrorize others or to engage in gang-related violence. Rather, in most cases, the weapon has been brought on to school property to impress others, that is, to "show off" to friends and classmates. That fact, however, by no means minimizes the seriousness of the situation or the need for a prompt and decisive response.

Rules and regulations promulgated by the State Board of Education make clear that whenever any school employee develops reason to believe (1) that a firearm has been unlawfully brought on to school property, or (2) that any student or other person is in unlawful possession of a firearm, whether on or off school property, or (3) that any student or other person has committed an offense with or while in possession of a firearm, whether or not such offense was committed on school property or during school operating hours, then the school employee must report the incident or information as soon as possible to the principal or, in the absence of the principal, to the staff member responsible at the time of the alleged violation. See N.J.A.C. 6:29-10.4b.

At that point, either the principal or the responsible staff member is required by regulation to notify the chief school administrator who, in turn, is required to notify, as soon as possible, the county prosecutor or other law enforcement official designated by the county prosecutor to receive this information. The chief school administrator or designee must provide to the county prosecutor or designated law enforcement agency all known information concerning the matter, including the identity of the pupil or staff member involved.

Note that this reporting requirement applies with respect to *information* concerning the unlawful possession or use of a firearm. Thus, school officials have a responsibility to report information to law enforcement even in cases where school officials did not directly observe, much less seize and secure, a firearm.

In a closely-related vein, rules and regulations promulgated by the State Board of Education provide that whenever a school employee seizes or comes upon any firearm, that employee must *immediately* advise the county prosecutor or other appropriate law enforcement official, and must secure the firearm or weapon pending the response by law enforcement to retrieve and take custody of the firearm. See N.J.A.C. 6:29-10.5b. School employees having custody of a firearm are required to take reasonable precautions, in accordance with local board of education procedures, to prevent its theft, destruction, or unlawful use by any person.

It is critical to note that teachers and other school employees are *not* required to take a gun away from a student. If a teacher or other school official learns that a student is carrying a firearm, the correct response is to immediately notify the principal or superintendent, who must then immediately call the police.

If a school official discovers a firearm in a desk, locker, or other location, he or she should not pick up or handle the weapon. Under no circumstances should the school official try to determine whether the gun is loaded. Rather, the correct response is to notify the principal or superintendent and to watch over the weapon to make certain that no one else takes or uses it until the police arrive on the scene.

Finally, it should be noted that the recently adopted "Zero Tolerance for Guns Act," P.L. 1995, c. 127 and 128, (N.J.S.A. 18A:37-7, et seq.), imposes additional administrative responsibilities upon school officials when a student is found to have brought a firearm on to school property, at a school-sponsored function or on a school bus. Those responsibilities and required procedures are generally beyond the scope of this Manual, and are discussed in a memorandum to chief school administrators from the Education Commissioner (attached as Appendix 7).

B. Knives and Other Deadly Weapons. Regrettably, it is not too uncommon that school officials will come upon students who are armed with weapons other than firearms, such as knives and clubs. Some weapons are especially dangerous and simply have no lawful purpose. Switchblades, gravity knives (which are similar to switchblades, but use centrifugal force rather than a spring to open), ballistic knives (which literally shoot out the blade as a projectile), stun guns, and metal knuckles would fall into this category.

Pursuant to rules and regulations adopted by the State Board of Education, whenever a school employee seize or comes upon any dangerous weapon other than a firearm, the school official should immediately advise the county prosecutor or appropriate law enforcement official, and secure the weapon pending the response by law enforcement to retrieve and take custody of the dangerous weapon. As with firearms, a school employee who has taken a dangerous weapon into custody is required to take reasonable precautions, in accordance with local board of education procedures, to prevent its theft, destruction, or unlawful use by any person. See N.J.A.C. 6:29-10.5b.

Note that the agreed-upon procedures spelled out in the Memorandum of Agreement concerning a knife or other deadly weapon are somewhat different from the rules concerning firearms. Whereas school officials are absolutely required in all cases to call police when a firearm is discovered, school officials are encouraged, but not required, to call police upon discovery of certain other types of weapons. In deciding how best to exercise discretion, school officials should use common sense. Generally, it would not be necessary to call police upon the discovery of a small pocket or Swiss Army-type knife, whereas police should always be called if a school official sees or learns about a switchblade, metal knuckles, or a stun-gun.

In deciding whether to call police, school officials should carefully consider the nature and dangerousness of the weapon and any legitimate uses which it may have. Utility or razor knives, sometimes also called "box cutters," for example, have many useful and legitimate functions, but are nonetheless also used by some adolescents as easily concealed weapons, and generally do not belong in schools except, perhaps, in arts and crafts classrooms. Note in this regard that school rules may also prohibit students from carrying pocket knives, and, in that event, school officials may also confiscate such items (and may conduct a lawful search for such items under the authority of New Jersey v. T.L.O.) even if the decision is ultimately made not to call the police when a small knife is discovered.

As a general rule, if the principal or superintendent is not sure whether to call the police, the safer course is to err on the side of seeking police advice and assistance, and *the police should always be called if the weapon was actually used or threatened to be used against a person*.

It is also very important to understand that school employees are *not* required or expected to use physical force to take a weapon from a student. School officials, in other words, should never try to wrest a weapon away from a student. Rather, the correct response is to notify the principal or local superintendent and immediately call the

police, who are equipped and specially trained to respond to these kinds of potentially violent situations.

It should also be noted that state law imposes certain disciplinary requirements if a pupil commits an assault upon a teacher, administrator, other school employee, or another student with any kind of weapon. Specifically, these assaultive pupils must be immediately suspended. N.J.S.A. 18A:37-2.2.

C. Illicit Drugs. Pursuant to rules and regulations promulgated by the State Board of Education, and subject only to certain federal confidentiality rules discussed in Chapter 14.2, any school official who has reason to believe that a pupil or staff member has unlawfully possessed or has been in any way involved in the distribution of a controlled dangerous substance (including anabolic steroids) or drug paraphernalia while on or near school property is required to report the matter as soon as possible to the principal, or, in the absence or the principal, to the staff member responsible at the time of the alleged violation. See N.J.A.C. 6:29-10.4(a). Either the principal or responsible staff member is then required by regulation to notify the chief school administrator, who, in turn, is required to notify as soon as possible the appropriate county prosecutor or other law enforcement official designated by the county prosecutor to receive this information.

Note that this reporting requirement applies with respect to any *information* concerning the suspected possession or distribution of illicit drugs. Thus, school officials have a responsibility to report information to law enforcement even in cases where school officials did not actually observe or seize illicit drugs or paraphernalia.

Where a school employee does seize or discover any substance or item suspected to be a controlled dangerous substance (including anabolic steroids) or drug paraphernalia, he or she is required by regulation to *immediately* notify and turn over the substance or item to the principal or designee. The school principal or designee is then required immediately to notify the chief school administrator or designee who, in turn, must notify the appropriate county prosecutor or other law enforcement official designated by the county prosecutor to receive this information. See N.J.A.C. 6:29-10.5(a). (Besides the duty established by the State Board of Education regulation, it is an offense in New Jersey for any person to dispose of a suspected controlled dangerous substance by any means other than by turning the substance over to a law enforcement officer. See N.J.S.A. 2C:35-10c.)

The school employee, principal, or designee is required by regulation to safeguard the substance or paraphernalia against further use or destruction and to secure the

substance or paraphernalia until such time as it can be turned over to the county prosecutor or other appropriate law enforcement officer. N.J.A.C. 6:29-10.5(a).

When the police arrive to take custody of the substance or paraphernalia, school officials are required by regulation to provide police with *all* known information concerning the matter, including the identity of the pupil(s) or staff member(s) involved (subject only to the federal confidentiality regulations discussed in Chapter 14.2). This information would include the exact location where the substance or paraphernalia was first discovered, the identity of all persons who had custody of the substance or paraphernalia following its discovery or seizure, and the identity of any pupil or staff member believed to have been in actual or constructive possession of the substance or paraphernalia (i.e, e.g., the name of the student assigned to the locker where the drugs or paraphernalia was found). (This information is sometimes referred to in the law as the "chain of custody.") See N.J.A.C. 6:29-10.5(a)(1).

It is critical to note that the Attorney General and the State Board of Education have adopted an "amnesty" feature that allows school officials to withhold the identity of any student who was in unlawful possession of a controlled dangerous substances in certain limited circumstances. Specifically, school officials need not tell the police the name of a student from whom drugs were obtained, provided that: (1) the student voluntarily and on his or her own initiative turned the drugs over to a teacher or counsellor; *and* (2) the student has agreed to accept help from the school's substance abuse program, *and* (3) there is no indication that the student was involved in drug distribution or "dealing" activities. See N.J.A.C. 6:29-10.5(a)(1).

For the purposes of this amnesty feature, an admission by a pupil made in response to questioning initiated by a school official, or following the discovery of a controlled dangerous substance or paraphernalia by a school official, does *not* constitute a voluntary, self-initiated request for counselling and treatment. By the same token, the amnesty feature would not apply in any case where the student was ordered to surrender the drugs, or where the student turned over drugs because he or she expected that the drugs would be imminently discovered in an ongoing sweep search or suspicion-based search.

This amnesty provision is designed to provide a strong incentive for students with a substance abuse problem to overcome denial and to seek out help. This reflects a conscious policy decision that the need to encourage substance abusing students to reach out for help outweighs the need to prosecute students for comparatively minor possessory drug offenses. Note that even where the amnesty provision applies, school officials are still required to turn the drugs over to police. See N.J.S.A. 2C:35-10c

(making it a criminal offense to dispose of controlled dangerous substances by any means other than turning them over to a law enforcement officer). Note also that the amnesty feature does not apply to firearms or other deadly weapons, but rather is limited to controlled dangerous substances or paraphernalia, since the purpose of this feature is not to secure evidence or even to remove dangerous items from the school, but rather to provide an incentive for students with a substance abuse problem to seek and accept help for their problem.

D. Child Abuse and Neglect. Under state law, school officials are required to keep a watchful eye for the telltale behavioral traits or physical signs of child abuse or neglect. The law establishes a legal duty for school officials, indeed for all citizens, immediately to report any suspected abuse to law enforcement authorities and/or to the Division of Youth and Family Services. See N.J.S.A. 9:6-8.10 and N.J.A.C. 6:29-9.1 et seq. Specifically, N.J.S.A. 9:6-8.10 provides that:

> Any person having reasonable cause to believe that a child has been subjected to child abuse or acts of child abuse shall report the same immediately to the Division of Youth and Family Services by telephone or otherwise. Such reports, where possible, shall contain the names and addresses of the child and his parent, guardian, or other person having custody and control of the child and, if known, the child's age, the nature and possible extent of the child's injuries, abuse or maltreatment, including any evidence of previous injuries, abuse or maltreatment, and any other information that the person believes may be helpful with respect to the child abuse and the identity of the perpetrator.

The statute further provides that any person who knowingly fails to report an act of child abuse having reasonable cause to believe that an act of child abuse has been committed may be criminally prosecuted as a disorderly person. N.J.S.A. 9:6-8.14.

Although teachers, school nurses, and other child-care professionals are especially likely to be in a position to detect evidence of child abuse, the court in State v. Hill, 232 N.J. Super. 353 (Law Div. 1989) made clear that the statutory duty to report suspected child abuse applies to *every* citizen. Recognizing the especially important role that school staff members must play in protecting children, the Legislature has further directed that:

> All school districts shall be required to establish policies designed to provide for the early detection of missing and abused children. These policies shall include provisions for the notification of the appropriate law

enforcement and child welfare authorities when a potential missing or abused child situation is detected.
[N.J.S.A. 18A:36-25.]

The statutory duty to report suspected child abuse applies even if the suspicion of child abuse is based upon information that is learned from a pupil who is participating in a school-based drug or alcohol abuse counselling program. See P.L. 1997, c. 362 (N.J.S.A. 18A:40A-7.1 et seq.) discussed in Chapter 14.2, infra. The new state law specifically addresses the problem that arises when a student's parent or guardian or other person residing in the pupil's household is dependent upon or illegally using a controlled dangerous substance. In such cases, there is a distinct possibility if not probability of child abuse or neglect, especially if there are young siblings residing in the household who are dependent upon a drug-using or selling parent or guardian for supervision and care.

In a similar vein, federal confidentiality law, which generally prohibits the disclosure of information concerning patients who are participating in substance abuse education, prevention, treatment, or rehabilitation programs, simply does *"not apply to the reporting under State law of incidents of suspected child abuse and neglect to the appropriate State or local authorities."* 42 U.S.C. § 290dd-2(e) (emphasis added). Thus, the federal law and regulations governing the confidentiality of drug and alcohol treatment programs cannot be relied upon to relieve the duty established under N.J.S.A. 9:6-8.10 to immediately report suspected child abuse. (Consult Chapter 14.2 for a more detailed discussion of federal confidentiality laws and regulations concerning information learned during the course of alcohol or other drug diagnosis or treatment.)

Note that state law provides unequivocally that a person who acts in good faith in reporting suspected abuse or neglect is immune from civil liability, and all doubts should be resolved in favor of reporting the suspicion to appropriate authorities. See N.J.S.A. 9:6-8.13.

E. Hate Crimes. Hate crimes — crimes that are motivated by racial, ethnic, religious, or sexual prejudice — inflame tensions and can work quickly to disrupt an entire community. There are many things that our children must learn while in school, but learning how to hate, or how to be hated, must never become part of the educational curriculum.

Regrettably, a large percentage of the hate crimes that occur in this state are committed by or directed against children. This is especially disturbing because school-aged children are particularly vulnerable to this type of crime and, acting out of

frustration, hate crime victims may be inclined to respond by engaging in further violence. It is important for school officials to understand that hate crimes that are committed away from school property can lead directly to retaliation and escalating violence in the school building.

The New Jersey Attorney General and the county prosecutors have adopted a policy that hate crimes will simply not be tolerated and will be investigated and prosecuted to the full extent of the law. Specially trained bias investigation officers are available to respond twenty-four hours a day to any suspected or confirmed hate crime incident.

A number of jurisdictions have adopted a model hate crimes agreement, patterned after the agreement between education and law enforcement officials concerning drugs and weapons. The hate crimes memorandum of understanding, sometimes referred to as the "Elizabeth Agreement," provides that if a school official in the course of his or her professional responsibilities learns of a crime committed on or off school grounds that seems to be motivated, in whole or in part, by racial, ethnic, religious, or sexual prejudice, the school official must immediately notify the principal or local superintendent, who then must immediately call the county prosecutor's office or the local police.

If a school official learns of an act that, while not criminal, nonetheless appears to be motivated by prejudice (such as the distribution of a hate pamphlet), the school official is strongly encouraged (but not necessarily required) to immediately notify the principal or superintendent who, in turn, is encouraged to call the prosecutor's office or local police as soon as possible.

It is important to remember that some acts that may not be subject to criminal prosecution, and that may even be considered to be a protected form of speech under the First Amendment, can nonetheless provoke hate, frustration, and violent relation. That is why it is so important that law enforcement officials be kept apprised of any incidents involving bias or prejudice.

For the purposes of this Manual, school officials would be authorized to conduct a search is they have reasonable grounds to believe that the search would reveal evidence of a bias crime. The search would not be unreasonable merely because the evidence subsequently uncovered could not be used as the basis for a criminal prosecution because the underlying conduct turned out to be a protected form of speech. (Recall that pursuant to New Jersey v. T.L.O., school officials are authorized to conduct searches for violations of school rules that do not amount to criminal offenses.) It must be noted in this regard that students do not shed their First Amendment rights when they enter the

schoolhouse. See Tinker v. Des Moines Comm. Sch. Dist., 393 U.S. 503, 89 S.Ct. 733, 21 L.Ed.2d 731 (1969). These First Amendment issues are often complex and are generally beyond the purview of this Manual.

If a school official, including a custodian, comes upon graffiti that seems to express racial, ethnic, religious, or sexual hatred (e.g., a swastika, racial epithets, etc.), or that suggests possible gang or hate group activities, the school official must, pursuant to the terms of the Hate Crimes Agreement, immediately notify the principal or local superintendent, who in turn must immediately notify the prosecutor's office or local police. As noted above, graffiti is often an indication of gang activities and is used by gang members to mark turf or as a form of newspaper to make announcements to other members, or especially to rival gangs. Because such graffiti is potential evidence of a crime, it is important that graffiti not be destroyed or damaged until the police have had an opportunity to come to the scene so that the evidence can be interpreted and photographed. Pending the arrival of police, school officials might want to conceal the graffiti in a manner that causes no permanent damage so as to minimize students' exposure to the hateful message or gang announcement. Once police have had an opportunity to make a photographic record of the evidence, school officials can arrange to permanently paint over or sandblast the graffiti without unnecessary delay.

F. Gambling. Gambling is a form of compulsive behavior that can be as dangerous and as addictive as drugs or alcohol. Although a gambling episode may start innocently enough, some children quickly run up gambling debts that amount to hundreds or even thousands of dollars. These children are often forced to steal from their parents or others to pay off these enormous debts. Most frightening of all, gambling operations, even those run by juveniles, routinely use force, intimidation, and strong-arm tactics to enforce gambling debts.

Illicit gambling operations for profit are a form of organized crime that cannot be tolerated in or around schools. In many cases, school officials may not even be aware of the type of evidence (such as gambling slips and records) that are associated with this form of criminal behavior. A number of prosecutor's offices have prepared materials that help to explain the nature of the problem, and these brochures are available for distribution to students, teachers, and parents. Law enforcement officials are also available to speak to student assemblies and to meet with school officials to discuss the telltale signs of a gambling enterprise.

It is important that school officials be able to recognize these activities, given the overriding need to protect student safety. Any threat to a student or school official

relating to the enforcement of a gambling debt should be taken seriously and should be reported immediately to the prosecutor's office or local police.

G. Other Crimes. Rules and regulations promulgated by the State Board of Education and the various memoranda of agreement spell out the procedures that school officials are either required or encouraged to follow in reporting certain specific types of crimes, such as drug possession or distribution, the possession or use of firearms, child abuse and neglect, and so-called "hate" crimes. These are especially serious forms of criminal behavior that school officials should report to law enforcement authorities promptly whenever there is a reasonable suspicion to believe that the offense occurred or is about to be committed. There are many other types of crimes and offenses that can and do occur on school property or that involve students, either as perpetrators or as victims. These include vandalism, theft, assaults, and gambling.

When a school official develops reason to believe that an offense has been committed on school property or by or against a student, he or she should report the incident to his or her appropriate superior (e.g., the building principal or local superintendent), who, in turn, must decide whether to call the police. The better practice is for school officials ordinarily to report all suspected crimes to the police or to the county prosecutor's office.

In deciding whether to call the police in cases that do not involve guns, other deadly weapons, drugs or drug paraphernalia, child abuse or neglect, or hate crimes, school officials should use common sense and should consider the seriousness of the offense and especially whether the victim or intended victim was a child. (School officials should be mindful that child victims are not only especially vulnerable, and may be in need of victim counselling services, but are also more likely than adult victims to retaliate or resort to vigilantism.)

As a general rule, *all* violent crimes should be reported to police, although, of course, school officials should exercise discretion in the case, for example, of a schoolyard fistfight that did not involve weapons or bodily injury to the combatants. It is important for school officials to understand that law enforcement authorities may be aware of other facts and circumstances that would shed light on the incident and put it in its proper context. A school-based offense that may not on its face seem too serious may actually be part of a larger pattern of crimes committed off of school property. (By way of example, a fistfight occurring in the schoolyard on a Friday afternoon may escalate into a more serious confrontation off of school property over the weekend.) Again, when in doubt, school officials should generally err on the side of reporting all suspected crimes to police for appropriate handling.

School officials should also be aware that it is a criminal offense in this state to conceal or destroy evidence of a crime committed by another. See N.J.S.A. 2C:28-6 and 2C:29-3a(3). When school officials seize or otherwise come into possession of any item or object that is contraband per se, or is suspected to be the fruit or instrumentality of a crime, they should contact the police as soon as possible to arrange for the police to take custody of the evidentiary object.

It also bears noting, finally, that not all crimes committed on school property are directed against students. Sometimes, teachers and other staff members become the victims of theft, vandalism, or assaults. While teachers and other school employees have many duties and responsibilities, they also have rights. The right to a safe school environment, one that is free of drugs, guns, and violence and that is conducive to education, is a right to be enjoyed by *all* members of the school community, including not only students, but also teachers, administrators, and all other school employees. For this reason, state law requires the immediate suspension of a pupil who commits an assault upon a teacher, administrator, or other school employee, even if a weapon was not used in the assault. See N.J.S.A. 18A:37-2.1.

14.2. Confidentiality of Substance Abuse, Diagnosis, and Treatment Information.

Pursuant to federal regulations, all information concerning a student's participation in a school intervention or treatment program for his or her own substance abuse must be kept strictly confidential. 42 C.F.R. Part 2. See also N.J.A.C. 6:29-10.6. Accordingly, nothing in other rules and regulations promulgated by the State Board of Education, or otherwise described in this Manual, should be construed in any way to authorize or require the transmittal to a law enforcement agency of any protected information or records that are in the possession of a substance abuse counselling or treatment program.

Specifically, federal law codified at 42 U.S.C. § 290dd-2 provides in pertinent part that:

> Records of the identity, diagnosis, prognosis, or treatment of any patient which are maintained in connection with the performance of any program or activity relating to substance abuse education, prevention, training, treatment, rehabilitation, or research which is conducted, regulated, or directly or indirectly assisted by any department or agency of the United States shall, except as provided in subsection (e) of this section, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized under subsection (b) of this section.

Regulations promulgated by the Federal Department of Health & Human Services pursuant to this statute make clear that, "no State law may either authorize or compel any disclosure prohibited by these regulations." 42 C.F.R. § 2.20.

In sum, school officials are not permitted to disclose to law enforcement authorities, or to any person other than a member of the local district substance abuse program, that a student has received or is receiving alcohol or other drug evaluation or treatment services. Nor are school officials permitted to disclose any information, including a student's identity or information about specific, illegal drug activity, where that information was learned in the course of or as a direct result of drug or alcohol abuse evaluation or treatment services provided by the local district substance abuse program. This prohibition, however, does not apply to information about illegal activity that was learned by a school employee *outside* of the local district substance abuse program, and any such information must be reported to police in accordance with N.J.A.C. 6:3-6.4 and 10.5. Nor would this law preclude school officials from documenting the number of students who are receiving substance abuse counselling for the purpose of justifying a school search policy, see Chapter 2.9, provided that school officials do not reveal any information that might identify any individual students.

Furthermore, the federal confidentiality statute expressly provides that, "[t]he prohibitions [on disclosure of information] of this section do not apply to the reporting under State law of incidents of suspected child abuse and neglect to the appropriate State or local authorities." 42 U.S.C. § 290dd-2(e). Consequently, this federal law in no way relieves the duty imposed on all citizens by N.J.S.A. 9:6-8.10 to immediately report suspected child abuse to the Division of Youth and Family Services, and the federal law and regulations would provide no defense to a disorderly persons prosecution under N.J.S.A. 9:6-8.14 for knowingly failing to report an act of child abuse. See Chapter 14.1D.

In addition to the federal statute and regulations concerning confidentiality of substance abuse diagnosis and treatment information, the New Jersey Legislature on January 12, 1998 adopted P.L. 1997, c. 362 in accordance with Governor Whitman's recommendations. The new law, codified at N.J.S.A. 18A:40A-7.1 et seq., provides in pertinent part that:

> Except as provided by Section 3 of P.L. 1971, c. 437 (C 9:6-8.10), if a public or private secondary school pupil who is participating in a school-based drug and alcohol abuse counseling program provides information during the course of a counseling session in that program which indicates that the pupil's parent or guardian or other person residing in the pupil's

> household is dependent upon or illegally using a [controlled dangerous substance], that information shall be kept confidential and may be disclosed only under the circumstances expressly authorized under subsection b. of this section.

The new statute is broader than the federal confidentiality statute and regulations in that it applies to any student who is participating in a school-based alcohol or drug abuse counselling program, even if the student is not personally abusing substances, but rather is seeking counselling to deal with the problems related to the substance abuse of another. The federal law, in contrast, only provides confidentiality protections to persons who are "patients," that is, persons who are receiving counselling for their *own* substance abuse problem. See 42 C.F.R. § 2.11(b) (defining the term "patient" to mean any individual who has applied for or has been given diagnosis for treatment for alcohol or drug abuse).

This represents an important extension of confidentiality protections and is designed to encourage students to seek help for the problems that arise from the substance abuse of parents or siblings. As early as 1987, the New Jersey Legislature found that:

> Research indicates that particular groups of youngsters, such as the children of alcoholic parents, may in fact face an increased risk of developing alcohol and other substance abuse problems and that early intervention services can be critical in their prevention, detection and treatment; and, school based initiatives have proven particularly effective in identifying and assisting students at a high risk of developing alcohol and other drug disturbances and in reducing absenteeism, decreasing the consumption of alcohol and other drugs, and in lessening the problems associated with such addictions.
> [N.J.S.A. 18A:40A-8 (b) and (c).]

It is nonetheless critical to note that the new state confidentiality law features an important exception to the general rule of preserving confidentiality. Specifically, the law does *not* prevent school officials or counsellors from disclosing information to the Division of Youth and Family Services (DYFS) or to a law enforcement agency "if the information would cause a person to reasonably suspect that the secondary school pupil or another child may be an abused or neglected child." In light of this express exception, and the express reference in the above-quoted text to N.J.S.A. 9:6-8.10, the new confidentiality statute in no way relieves the duty imposed by the State Legislature on all citizens, including school administrators, teachers, counsellors, school nurses, and

substance awareness coordinators, to inform DYFS immediately where there is reasonable cause to believe that a child has been subjected to child abuse or acts of neglect. (As noted in Chapter 14.1D, a person who knowingly fails to report an act of child abuse having reasonable cause to believe that an act of child abuse has been committed is guilty of a disorderly persons offense. N.J.S.A. 9:6-8.14.)

It is also important to note that school officials have a number of specific statutory and regulatory responsibilities that arise when they develop reason to believe that a student may be under the influence of alcoholic beverages or other drugs while on school property or at a school function. Specifically, school employees are required to report the matter as soon as possible to the school nurse, medical inspector, or the principal. See N.J.A.C. 6:29-6.5. Those reporting provisions, and the procedures that require that the student be removed and examined by appropriate medical personnel are more fully described in Chapter 13.2 and in rules and regulations promulgated by the State Board of Education that are attached as Appendix 5.

It should be noted, finally, that school employees who in good faith report suspected substance abuse of a pupil to the principal or school nurse are afforded express immunity from civil liability. See N.J.S.A. 18A:40A-14.

14.3. Reciprocal Sharing of Information.

In 1994, Governor Whitman signed legislation that amended New Jersey's Code of Juvenile Justice to make it easier for law enforcement agencies to share information with schools. Specifically, the act provides for three categories of disclosure of information to schools. These are: (1) permissive disclosure during an investigation; (2) disclosure following a charge at the principal's request; and (3) required disclosure following a charge.

A. Permissive Disclosure During an Investigation. The new law permits law enforcement or prosecuting agencies to provide school officials with information regarding a juvenile who is under investigation for an offense when, in the judgment of law enforcement authorities, the information may be useful to school officials in maintaining order. This information may also be shared by the principal with appropriate school staff, but where no charges have been filed, the statute prohibits this information from being "maintained" as part of a pupil's records. Since the statute prohibits school officials from maintaining a record of this information, it should be provided orally by law enforcement officials. Providing this information orally, rather than in writing, will help to avoid inadvertent retention or disclosure of such information.

B. Disclosure Following Charge at Principal's Request. The law contains provisions that allow principals to request information regarding juvenile delinquency charges that were filed against an enrolled student. These requests may either be made by the principal on a case-by-case basis or according to procedures that could be agreed to in advance as part of the Memorandum of Agreement Between Education and Law Enforcement Officials (1992). For example, a school district and local police department might agree to automatically share this information regarding all students enrolled in the district who are formally charged with delinquency.

C. Required Disclosure Following Charge. The new law *requires* that law enforcement or prosecuting agencies advise the principal of the school where the student is enrolled if the student is charged with delinquency and:

(1) the offense occurred on school property or a school bus, occurred at a school-sponsored function, or was committed against an employee or official of the school; or,

(2) the juvenile was taken into custody (i.e., arrested) as a result of information or evidence provided by school officials; or

(3) the offense resulted in death or serious bodily injury, or involved an attempt or conspiracy to cause death or serious bodily injury; the unlawful use or possession of a firearm or other weapon; the unlawful manufacture, distribution, or possession with intent to distribute a controlled dangerous substance; or the intimidation of an individual or group of individuals because of race, color, sexual orientation, or ethnicity; or,

(4) the offense if committed by an adult would be classified as a crime of the first or second degree.

The specific provisions for sharing juvenile delinquency information to schools are more fully described in a memorandum from the Attorney General and the Commissioner of Education dated July 28, 1995, which is attached as Appendix 8.

D. Specificity of Shared Information. Pursuant to N.J.S.A. 2A:4A-60 as recently revised, where law enforcement agencies are authorized to provide information concerning a juvenile to school officials, they may do more than merely advise the principal as to the name of the charge and the citation to the applicable statute, whether the juvenile was acquitted or adjudicated delinquent, and what disposition (i.e.,

sentence) was imposed. Rather, law enforcement officials are permitted to share any information about the juvenile (subject to other confidentiality laws such as those governing information learned by means of electronic surveillance) that could reasonably pertain to maintaining order, safety, and discipline in the school.

Thus, for example, police could provide the principal with information concerning: the specific type of drug found (as determined by field tests and laboratory analysis); the amount, purity, and value of the drug; how the drug was packaged; whether cash was found or whether there are other indications that the drug was intended to be sold or distributed; where precisely the drug or other contraband was found; what type of weapon was found; whether a suspected firearm was operable and/or loaded; and whether the suspected offense involved or was directed at another enrolled student. (It is especially important promptly to share information concerning the identity of a victim who is enrolled at the same school so that school officials can take steps to protect the victim from further attack and to prevent retaliation or an escalation of violence.)

In addition, the revised juvenile confidentiality law permits a law enforcement officer to testify in a due process suspension or expulsion hearing as to any such facts concerning the offense, provided that the hearing is closed to the general public, and further provided that the prosecutor's office is satisfied that providing such testimony at a hearing before a school board would not jeopardize a law enforcement operation, investigation, or juvenile or adult prosecution.

14.4. Using Information Provided by Law Enforcement Agencies.

Contrary to population misconception, school officials are permitted to conduct their own investigations and to initiate appropriate disciplinary proceedings based upon information provided by law enforcement, even where a formal juvenile prosecution is still pending. (As noted in Chapter 14.3D, police officers may even provide testimony in support of a school disciplinary proceeding.) In other words, it in no way constitutes "double jeopardy" to conduct parallel investigations and disciplinary/prosecution proceedings. Furthermore, school authorities may discipline a student for violating school rules without having to wait for a finding of guilty by a Family Court Judge, and may even impose discipline for a violation of school rules where the student has been found *not guilty* of the same conduct in a formal juvenile prosecution, since the standard of proof used in the juvenile justice system, proof beyond a reasonable doubt, is far greater than the standard used by schools in expulsion, suspension, or other disciplinary proceedings.

School officials should be cautious, however, not to inadvertently undermine an ongoing law enforcement investigation or juvenile prosecution. Accordingly, when school officials are apprised that police are interested in a matter, or that a juvenile prosecution is pending, school officials should take no further action, and certainly should conduct no further investigation (such as by conducting a search or questioning the suspected student or any other witness) without first consulting with the county prosecutor.

As noted throughout this Manual, if school officials should decide to undertake an investigation or to conduct a search based upon information that was provided by law enforcement, significant issues arise whether the resulting search was conducted independently by school officials under the authority of New Jersey v. T.L.O., or whether instead the search will be subject to the stricter search and seizure rules governing the law enforcement community. (For a more detailed discussion of these issues, see Chapter 4.5D4(a).)

14.5. Resolving Controversies and Disputes.

Pursuant to rules and regulations adopted by the State Board of Education, school officials are expressly authorized to request that a law enforcement agency assume responsibility for conducting any search or seizure. See N.J.A.C. 6:29-10.3b4(ii). (In that event, of course, the resulting search conducted by police must be done in accordance with the rules governing law enforcement searches.) By the same token, school officials are required by regulation to permit law enforcement authorities upon their arrival to assume responsibility for conducting any search or seizure. See N.J.A.C. 6:29-10.3(b)(4)(iv).

School officials are expressly prohibited by regulation to "impede any law enforcement officer engaged in a lawful search, seizure, or arrest, whether pursuant to a warrant or otherwise." N.J.A.C. 6:29-10.3b4(iii). In other words, school officials are required to defer to police officers with respect to the execution of an arrest or a search. While school officials in many contexts are said to serve "in loco parentis" (that is, in the place of parents), it is important to note that even parents are not allowed to interfere with police officers who are acting within the scope of their duty. In fact, it is a criminal offense to do so. See N.J.S.A. 2C:29-1 (obstruction of administration of law or other governmental functions). Where any individual believes that a search that is being conducted by a law enforcement officer is unlawful, the appropriate recourse is ***not*** to resist, but rather to submit to the search and, thereafter, to challenge the matter in court.

However, and consistent with the spirit of cooperation between education and law enforcement officials expressed in the Memorandum of Agreement Between Education and Law Enforcement Officials (1992), school officials are authorized to direct any dispute or objection to any proposed or ongoing law enforcement operation or activity to the chief executive officer of the law enforcement agency involved. See Attorney General Directive 1988-1, Part 8, ¶ 3. Where the chief executive officer of the agency is for any reason unable to satisfactorily resolve the dispute or objection, the matter should be referred to the county prosecutor, who is expressly authorized by the Attorney General to work in conjunction with the county superintendent of schools and, where appropriate, the Division of Criminal Justice, to take appropriate steps to resolve the dispute. The county prosecutor bears responsibility for the exercise of sound discretion in such matters consistent with the policies announced in the Attorney General Directive that requires cooperation between law enforcement and education officials. Any dispute that cannot be resolved at the county level must be resolved by the Attorney General, whose decision is binding.

14.6. The Role of Prosecutors in Answering Search and Seizure Questions.

Prosecutors are expressly authorized by the Attorney General to answer questions posed by school officials concerning the law of arrest, search and seizure. It must be noted in this regard that a prosecutor in responding to these questions must not encourage or authorize, much less direct, a school official to undertake a given search, since to do so might make that search subject to the stricter rules governing the law enforcement community. As noted in Chapters 4.5D4 and 6.2, the New Jersey Supreme Court in State v. P.Z. 152 N.J. 86 (1997), recently warned that courts must be sensitive to the potential to the state's deliberately manipulating a civil or noncriminal procedure in order to obtain evidence against a criminal defendant. The Court in that case held that a Division of Youth and Family Services (DYFS) caseworker was not required to provide Miranda warnings before conducting a noncustodial interview because the caseworker in that case was acting within the scope of her duties to investigate and establish a placement plan for the defendant's daughter, and because there was no indication that she had interviewed the defendant with the purpose of aiding in the criminal prosecution or otherwise had a "hidden agenda" to obtain an incriminating statement. In a dissenting opinion, Justice Pollock, who was joined by Justice Coleman, came to a different conclusion, finding ultimately that while the DYFS caseworker may well have been acting primarily to protect the best interests of the injured child, she was also acting on behalf of the county prosecutor, in effect as a "dual agent." The "proof of the pudding," according to Justice Pollock, was that the county prosecutor had expressly authorized the DYFS caseworker to take a statement of the defendant. 152 N.J. at 128-129 (Pollock, J., dissenting).

In the circumstances, it is important that when giving legal advice to school officials with respect to search and seizure issues, county prosecutors should not direct, request, recommend, or even "authorize" school officials to conduct a search or to interview a potential criminal defendant. Rather, the prosecutor should only explain the applicable principles of law and advise the school officials whether the contemplated search or seizure is likely to be judged to be lawful or unlawful based upon an objective assessment of the facts and the law.

Accordingly, Attorney General Directive 1988-1 makes clear that nothing in that Directive shall be construed to require any school official to actively participate in any search or seizure conducted or supervised by a law enforcement officer. Nor should any provision of that Executive Directive, or this Manual, be construed to direct, solicit, or encourage any school official to conduct any search or seizure on behalf of law enforcement, or for the sole purpose of ultimately turning evidence of a crime over to a law enforcement agency. Rather, it must be understood that any search or seizure conducted by a school official must be done in furtherance of the school official's independent responsibility to maintain order, discipline, and safety, based on the school official's independent authority to conduct reasonable investigations as provided in New Jersey v. T.L.O.. See Attorney General Directive 1988-1, Part IV J7.

With these important caveats in mind, prosecutors are nonetheless authorized to provide legal advice to school officials, with the understanding that school officials are free to reject that advice, and are encouraged in any event also to seek legal advice from the school district's attorney.

Finally, prosecutors should *not* give advice to school officials concerning random drug testing programs, since this is a highly-specialized field of search and seizure law that allows for no law enforcement involvement and that is generally beyond the ken and expertise of law enforcement officials. (As noted in Chapter 13.3D, prosecutors may, however, assist local school officials in documenting the nature and scope of a school's drug problem by sharing information concerning the unlawful activities of enrolled students in accordance with N.J.S.A. 2A:4A-60c.)